

## **MINUTES**

### **MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON ENERGY AND TELECOMMUNICATIONS**

**Call to Order:** By **CHAIRMAN MACK COLE**, on February 17, 2001 at 12:05 P.M., in Room 317-C Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Mack Cole, Chairman (R)  
Sen. Royal Johnson, Vice Chairman (R)  
Sen. Steve Doherty (D)  
Sen. Alvin Ellis Jr. (R)  
Sen. Mike Halligan (D)  
Sen. Bea McCarthy (D)  
Sen. Walter McNutt (R)  
Sen. Don Ryan (D)  
Sen. Corey Stapleton (R)  
Sen. Mike Taylor (R)  
Sen. Tom Zook (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Todd Everts, Legislative Branch  
Misti Pilster, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB471, 2/16/2001; SB 475,  
2/16/2001  
Executive Action: SB 471; SB 475

#### **HEARING ON SB 471**

**Sponsor:** SENATOR KEN TOOLE, SD 27, Helena

**Proponents:** Patrick Judge, Montana Environmental Information  
Center

**Don Judge, AFL-CIO**

**Matthew Leow, Montana Public Interest Research Group**

**Al Smith, Self**

**Wendy Young, WEEL**

**Betty Beverly, Montana Senior Citizen's Assn.**

**Opponents: Jim Mockler, Montana Coal Council**

**Haley Beaudry, Self**

**Opening Statement by Sponsor:**

**SENATOR KEN TOOLE, SD 27, Helena,** stated that this bill restricts the use of public funds, tax credits, and tax deductions for investments in coal and natural gas facilities unless the net generating load of the facility is dedicated to in-state use for customers with an individual load requirement of less than 1,000 kilowatts. He submitted information on proposed generation in the western United States, **EXHIBIT (ens40a01)**.

**Proponents' Testimony:**

**Patrick Judge, Montana Environmental Information Center,** noted that Montana exports 47% of the power generated within the state. He believed there should be more renewable energy sources in the mix with hydroelectric and coal generated facilities. He also discussed climate change and greenhouse gases. The production of power by coal fired generation is the nation's leading source of carbon dioxide.

**Don Judge, AFL-CIO,** claimed that using our abundant natural resources to produce electricity will create good paying jobs during construction and in the generation facilities. Ultimately, if public lands, public funds, or tax incentives are used to encourage development of generation facilities, the energy produced should be dedicated to Montana consumers first. It should also be regulated as to price and should be both reliable and affordable. The 1,000 kilowatt limit in the bill is unnecessary. However, if public dollars are spent for the purpose of encouraging or developing new energy facilities, some limits should be attached as to the ability to make it available at an affordable price and in a reliable system.

**Matthew Leow, Montana Public Interest Research Group,** supported the legislation. He replied that if corporations want to build new coal fired generation facilities, they should be able to at their own risk. However, if that involves state funds, it would be sensible to have guidelines. The bill does not prohibit fossil fuel generation, but sets standards for which state funded projects must meet.

**Al Smith, Self**, acknowledged the legislation as a good, common sense bill.

**Wendy Young, WEEL**, urged a "do pass" vote from the committee.

**Betty Beverly, Montana Senior Citizen's Assn.**, supported the bill.

**Opponents' Testimony:**

**Jim Mockler, Montana Coal Council**, discussed tax-free bonds that were sold in Colstrip and how valuable that was for citizens.

**Haley Beaudry, Self**, opposed the bill because it does the opposite of what the state needs to do. Montana is blessed with the nation's largest coal reserves. He submitted a proposed amendment to the bill, **EXHIBIT (ens40a02)**.

**Questions from Committee Members and Responses:**

**SENATOR COREY STAPLETON** asked if the sponsor would be opposed to removing the 1,000 kilowatt designation. **SENATOR TOOLE** replied that he would oppose the amendment because it was initially in the bill to focus on small customers. **SENATOR STAPLETON** wondered if the sponsor would prefer having a larger project which might have less impact. **SENATOR TOOLE** stated that the bigger the project, the more risk there is.

**SENATOR STEVE DOHERTY** questioned the sponsor about how he felt on the issue of bonds for pollution control. **SENATOR TOOLE** responded that if the developer requires environmental litigation in order to make the project acceptable, the developer should assume those costs.

**SENATOR MIKE TAYLOR** wondered where data had come from saying that his constituents were concerned with energy costs. **Wendy Young** stated that her organization's members who are low income families were concerned. **SENATOR TAYLOR** noted that his area is home to some of the lowest cost power in the state.

**SENATOR TAYLOR** exclaimed that from previous testimony, companies in Montana such as ethanol or pasta plants should be made to sell all of their products in the state. **Don Judge** defended that as incorrect. These are electrical generation facilities and if citizens have to pay for them, the power should be dedicated to Montanans first at a reasonable, affordable, and reliable price. **SENATOR TAYLOR** indicated that energy was being separated from all other products sold that have tax credits or tax breaks. **Mr.**

**Judge** declared that this situation deals with deregulation and its' potential impacts on Montana consumers and businesses.

**SENATOR TOM ZOOK** sought to find out where **Patrick Judge** had gotten information from the past 10,000 years, as stated in his testimony. **Mr. Judge** clarified that the type of data mentioned is collected through ice core samples. The composition of air bubbles can be analyzed from many years past by scientists.

**SENATOR ZOOK** recounted that several years ago scientists predicted the earth was cooling. **Mr. Judge** noted that the theory of global warming has gained credibility recently. **SENATOR ZOOK** stated that scientists are not infallible. **Mr. Judge** agreed, but replied that with each passing year more scientists agree and have proof of a warming trend.

**SENATOR ZOOK** wanted an explanation of "dedicated to in-state use and cost base prices" on line 15. **SENATOR TOOLE** reported that cost base means the cost of actual production plus a reasonable rate of return to get the price. **SENATOR ZOOK** inquired if that would be determined by the PSC. **SENATOR TOOLE** announced that was correct.

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**SENATOR MIKE HALLIGAN** asked what the sponsor thought of **Haley Beaudry's** suggested amendments. **SENATOR TOOLE** declared that he wasn't sure how much subsidy is provided and that he would oppose the amendments.

**SENATOR ZOOK** stated **Matthew Leow's** organization opposed state funds being used to help with generation facilities, but supports state funds for Universal Systems Benefits for renewable energy and wondered why. **Mr. Leow** clarified that state funds should be used responsibly and with guidelines if used to fund projects.

**SENATOR ROYAL JOHNSON** was curious as to who would regulate the cost base and how that would be done. **SENATOR TOOLE** believed that it could be enforced in court. **SENATOR JOHNSON** pressed for how the court would determine the cost. **SENATOR TOOLE** responded that would come from the traditional regulated utility model. He would support a reasonable rate of return on a capital investment and that is what the cost base price refers to.

**SENATOR MACK COLE** inquired whether the sponsor would have a problem with an amendment to say general funds no matter what the project. **SENATOR TOOLE** didn't believe it's the primary purpose of government to invest in business. Generally, he would oppose public investment in private business. From a theoretical point,

developers should incorporate all of the costs of doing their business and charge that to their customers.

**Closing by Sponsor:**

**SENATOR TOOLE** urged the committee to look at the plans for projects to come on-line in the near future.

**HEARING ON SB 475**

**Sponsor:** SENATOR STEVE DOHERTY, SD 24, Great Falls

**Proponents:** Don Judge, AFL-CIO

Matthew Leow, Montana Public Interest Research Group

Patrick Judge, Montana Environmental Information  
Center

Dennis Lopach, Northwestern Corporation

Debbie Smith, Self

Clyde Dailey, AARP

Betty Beverly, Montana Senior Citizen's Assn.

Wendy Young, WEEL

**Opponents:** Rae Olson, PPL

Jim Mockler, Montana Coal Council

**Opening Statement by Sponsor:**

**SENATOR STEVE DOHERTY, SD 24, Great Falls,** stated that this legislation arises from concerns of Montanans with regard to electrical prices. He submitted one section of the Montana Constitution, **EXHIBIT(ens40a03)**, and discussed the Unfair Trade Practices Act, as well as anti-trust laws. The bill says that as a state policy, there should not be unfair electrical policy. Those are defined as a price increase of more than 25% in any 48 hour period or 50% in any 30-day period. Price spikes occur around the region without any relationship to the cost of the product. If the bill's triggers are met, a company is presumed to have taken an unfair electrical profit. However, if there was a good reason, such as increased cost or a shut down plant, that presumption could be defeated. In that case, a company is not subject to the structures of the act. The bill will provide an incentive for Montana consumers, both large and small, to look out for their interests. It should also be a disincentive for people to profiteer. He submitted profits of some unregulated California generators, **EXHIBIT(ens40a04)**.

**Proponents' Testimony:**

**Don Judge, AFL-CIO**, noted that this bill isn't about huge change in Montana's policy, but rather protecting the jobs of workers, consumers, and the public dollar. New energy prices are already beginning to hit in school districts, cities, prisons, and other public buildings.

**Matthew Leow, Montana Public Interest Research Group**, addressed the idea that energy is just another commodity. If we change the way electricity is sold, different measures need to be taken to protect consumers. The percentages within certain time frames are drastic increases.

**Patrick Judge, Montana Environmental Information Center**, stated that today's energy crisis is a supply and demand problem. He submitted a press release on energy policy, **EXHIBIT(ens40a05)**.

**Dennis Lopach, Northwestern Corporation**, cited that the legislation falls under the consumer protection type of provisions. He mentioned that on page 2, line 1, the word "distributing" appears and that falls in an area which remains fully regulated by the PSC.

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**Debbie Smith, Self**, exclaimed that this bill is a necessary tool which is consistent with existing consumer laws where there are competitive markets for other goods when a supplier or vender acts in a way that isn't consistent with those markets. There is an Unfair Trade Practices Act in Montana law and this would allow those laws to apply to electricity. This legislation would give the large customer clients more negotiating power with the suppliers they would deal with. It will also give Montana Power an important bargaining tool when they are negotiating with the suppliers to get a good price. Furthermore, it is consistent with SB 243.

**Clyde Dailey, AARP**, relayed a personal story and urged favorable consideration.

**Betty Beverly, Montana Senior Citizen's Assn.**, asked the committee to pass the bill.

**Wendy Young, WEEL**, proclaimed that it is wrong for electric companies to make enormous profits from the citizens of Montana and voiced her support of the legislation.

**Opponents' Testimony:**

**Rae Olson, PPL**, declared that her group produces 20% of the power produced in Montana. They believe this bill has nothing to do with profits. There is no reference to costs or any formula for determining profits so they believe it is a price cap. The penalties are excessive and actually based on the sales price. They operate in a deregulated marketplace and are exposed to both the risks and rewards of that marketplace. The bill is flawed because it doesn't differentiate between the spot market and long term contracts. The bill refers to price escalators which are common in the spot market. The legislation subjects generators to liability for acts beyond their control. It also discourages the sale of power in Montana.

**Jim Mockler, Montana Coal Council**, professed that the electric utility industry of electricity is a commodity. The bill is aimed at generators and it is a risky market.

#### **Informational Testimony:**

**Haley Beaudry, Columbia Falls Aluminum (CFA)**, informed the committee that his company operates their plant in Columbia Falls and produces aluminum as a commodity. Aluminum is melted by running electricity through a mixture of aluminum and molten metal in 40 foot long pots. There are five lines of those pots. During full operation, the plant employs about 600 people and uses approximately 350 megawatts, by far the largest user of electricity in Montana. CFA has a contract with Bonneville Power Administration (BPA) which will expire on September 30, 2001. The first pot-line was shut down in September of 2000 and the remaining pot-lines were shut down by the end of the year, shutting the plant down completely. CFA makes no money doing this. Rather, CFA pays BPA a relatively large sum. Another large portion of the money pays full wages and benefits for all the employees. Finally, there is a savings account from which money can only be used to buy power with in the future. The plan is to re-open the plant in January 2002.

#### **Questions from Committee Members and Responses:**

**SENATOR STAPLETON** questioned **Patrick Judge** about green power and the price of different energy sources. **Mr. Judge** believed that if a green power company would have greater costs associated with the production of renewable energy, those costs should still be able to be passed through. **SENATOR STAPLETON** argued that the legislation doesn't say that. **Mr. Judge** disagreed and referred to line 16. **SENATOR STAPLETON** mentioned page 2, lines 1-3 and didn't know why that was needed. **Mr. Judge** didn't believe that section would apply to the original negotiation of the contract with a supplier if the supplier were to try to increase their

profits within a 48-hour or 30-day period. They are not in favor of irresponsible profits being made by green power companies.

**SENATOR STAPLETON** wondered what "treble" meant on page 2, line 10. **SENATOR DOHERTY** responded that it means three times. If there is a price of ten today and it is 100 tomorrow, that would trigger the act. There would be a presumption that it was an unfair electrical profit. However, if someone came in and said that there was an excellent reason for increasing 90 in one day, the person wouldn't be subject to the penalties of the act. Nonetheless, proof would still be necessary. **SENATOR STAPLETON** thought that the floor would be raised and the loss would be passed on to the consumer. **SENATOR DOHERTY** purported that it doesn't prevent a profit, but does prevent profiteering.

**SENATOR WALT MCNUTT** wished for an explanation of how the bill would help the state if put into effect. **SENATOR DOHERTY** declared that there would be a contract with an entity who would be required to provide power. They would call and say the price has increased by a certain amount. At that point, if there is a justification for the increase in power, the entity is allowed to charge that amount. If the justification can't be proven, a consumer could take the entity to court and the entity would have to return those profits back to the consumer.

**SENATOR DON RYAN** asked for an explanation as to whether this bill would deal with only open-ended contracts that are adjustable or other types of contracts. **SENATOR DOHERTY** asserted that if there was a contract and the time period expired, that would end the negotiation.

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**SENATOR ZOOK** inquired whether anyone could question the case or as it says on page 2, line 19, the PSC, Attorney General, or a county attorney only. **SENATOR DOHERTY** declared that the law, as drafted, gives the authority to the PSC, Attorney General, county attorney, or an individual. **SENATOR ZOOK** elaborated that it seemed like the legislation was being treated as an entitlement. **SENATOR DOHERTY** wasn't sure if a "basic and irreplaceable necessity" was an entitlement.

**SENATOR TAYLOR** indicated that if the sponsor was really concerned about consumers, a limit should be placed on attorney fees so as not to price gouge anyone. **SENATOR DOHERTY** proclaimed that a consumer who couldn't get the help of the PSC or the Attorney General would need highly specialized lawyers, a lot of money, and some electrical rate analysis in order to justify their case. **SENATOR TAYLOR** noted that if a company induced price spikes, this



legislation would set a policy saying that the state really doesn't want businesses to make money here. **SENATOR DOHERTY** didn't believe that was correct. Electricity is a special case and consumers that are Montana businesses need some sort of protection.

**SENATOR HALLIGAN** indicated that under current law, the default supplier has an obligation to serve consumers. **SENATOR DOHERTY** replied that was correct. **SENATOR HALLIGAN** further noted that the default supplier has to go out and buy power from someone else in 2002 to handle their loads. They would buy the power, and a consumer wouldn't sue the default supplier, but rather the company that sold the power to them. **SENATOR DOHERTY** was under that assumption that was correct.

**SENATOR ALVIN ELLIS** desired to know how many power suppliers there are in the Western Systems Coordinating Council (WSCC). **SENATOR DOHERTY** wasn't sure. **SENATOR ELLIS** questioned how many different entities provide generation power. **SENATOR DOHERTY** didn't know. **SENATOR ELLIS** asked if there had been any collusion in the scenario. **SENATOR DOHERTY** was unsure whether there had been collusion to the extent that utility executive A talked to utility executive B. However, he did know that when there was a problem, certain companies could charge as much as they wanted. **SENATOR ELLIS** argued that's how the free market works. **SENATOR DOHERTY** said in the electricity market, there is a natural monopoly and people don't have a choice because electricity is a necessity.

**SENATOR JOHNSON** sought to know if this legislation wouldn't be triggered if the price went from \$10 to \$16 in a 30-day period or from \$10 to \$13 in a 48-hour period. **SENATOR DOHERTY** cited that was correct. **SENATOR JOHNSON** theorized that if he were a generator of power, had the facilities to transmit a certain amount of power to a market for a specified time period, and was offered an amount of money, whether the sponsor would want the legislation to trigger on a situation like this. **SENATOR DOHERTY** didn't believe the bill would be triggered in that circumstance.

**SENATOR JOHNSON** mentioned MRI in Butte. **Don Judge** exclaimed that when MRI chose to go off the system, they got a better price on the deregulated market for about 18 months. When they had to go back and shop for additional power, they were unable to find that price and it hurt them substantially. **SENATOR JOHNSON** wondered if that was a deregulation problem or a corporate decision. **Mr. Judge** contended that deregulation itself didn't create the problem, but allowed people who make the decisions to make dumb ones. Those people chose, for the sake of short term profits, to

end up in a situation where there are long term problems.

**SENATOR JOHNSON** pressed as to whether natural gas would or should come under this legislation. **Mr. Judge** declared that he would love to see that happen.

**SENATOR JOHNSON** referred to previous testimony and a suggestion that there were drastic increases in the electric business. He wondered if there were drastic increases in other businesses and how they would be handled. **Mr. Leow** replied that other businesses would certainly be exposed to increases and the market would take care of those price increases. Other markets are different from electricity.

**SENATOR JOHNSON** noted that **Dennis Lopach** had helped put together a set of rules and some amendments for the PSC to consider. **Mr. Lopach** said they weren't really rules, but rather standards which were proposed to the legislature by various industry participants. **SENATOR JOHNSON** wanted clarification as to what "operating affiliates" meant. **Mr. Lopach** didn't remember the exact use, but it was strictly designed to address the possibility that Northwestern Corporation would invest in a generating entity in Montana. **SENATOR JOHNSON** suggested that if Northwestern had a generating facility like Colstrip 4, this bill would be beneficial. **Mr. Lopach** didn't necessarily believe so. His point with the bill was that there is little the state can do to address the relationship between buyers and generators.

**SENATOR JOHNSON** wondered if there ought to be a tracking mechanism for the sale of electricity, as proposed by Northwestern to the PSC. **Mr. Lopach** surmised that was correct. The tracker would go into place in July 2002 and rates would adjust once annually.

**SENATOR JOHNSON** was curious as to when CFA sold \$60 million worth of power back to BPA. **Haley Beaudry** clarified that CFA paid \$60 million to BPA so they would buy the power back. As 2001 progresses, CFA will receive money for that power that will be used for wages and benefits. The wages and benefits total about \$60 million as well. The original discussion was that BPA would like to receive 30-35% of the total sales revenues. That number would be approximately \$60 million and on that basis, the total should be in the area of \$170 million.

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**SENATOR TAYLOR** questioned what the sponsor would think if the price of electricity decreased below 25% in a 48-hour period or 50% in a 30-day period and whether the company should be subsidized. **SENATOR DOHERTY** declared that the bill is designed to address a problem caused by spiking prices.

**Closing by Sponsor:**

**SENATOR DOHERTY** elaborated that most everyone is in the free market and sometimes that market is very cruel. There needs to be some consumer protection and this legislation will help with that. He asked for favorable consideration from the committee.

**EXECUTIVE ACTION ON SB 471**

**Motion:** **SENATOR HALLIGAN** moved that **SB 471 DO PASS.**

**Substitute Motion/Vote:** **SENATOR DOHERTY** made a substitute motion that **"EXCEPT FOR POLLUTION CONTROL EQUIPMENT" BE INSERTED AFTER "FACILITY" ON PAGE 1, LINES 15 AND 17, EXHIBIT(ens40a06).** Substitute motion carried unanimously.

**Substitute Motion/Vote:** **SENATOR STAPLETON** made a substitute motion that **"WITH INDIVIDUAL LOAD REQUIREMENTS LESS THAN 1,000 KILOWATTS" BE STRICKEN.** Substitute motion carried unanimously.

**Substitute Motion/Vote:** **SENATOR JOHNSON** made a substitute motion that **SB 471 BE INDEFINITELY POSTPONED.** Substitute motion carried 7-4 with Doherty, Halligan, McCarthy, and Ryan voting no.

**EXECUTIVE ACTION ON SB 475**

**Motion:** **SENATOR MCCARTHY** moved that **SB 475 DO PASS.**

**Substitute Motion/Vote:** **SENATOR STAPLETON** made a substitute motion that **"CONSECUTIVE" BE INSERTED BEFORE "48-HOUR PERIOD" AND "30-DAY PERIOD".** Substitute motion carried 10-1 with Johnson voting no.

**Substitute Motion:** **SENATOR DOHERTY** made a substitute motion that **"DISTRIBUTING" BE STRICKEN FROM PAGE 2, LINE 1.**

**Discussion:**

**SENATOR JOHNSON** wondered if the distributing company would still be covered by the bill if they became a generator of electricity. **SENATOR DOHERTY** replied that the language would mean they were covered. If a company generated or sold, the act would be triggered.

**SENATOR ZOOK** exclaimed that he could not support the substitute motion.

**Vote:** Substitute motion **carried 8-3 with Johnson, Taylor, and Zook voting no.**

**Discussion:**

**SENATOR ELLIS** explained the economics of the electrical commodity. The problem with the WSCC is that they over regulated. PSC's and regulators across the northwest, in order to keep prices down, would not allow power companies to put new generating facilities on-line because it would marginally increase the cost of power to the customer.

**SENATOR MCCARTHY** wished to keep the bill alive so there could be some good discussion on the floor.

**SENATOR DOHERTY** noted that the problem was that the anti-trust laws don't apply and there isn't a connection between the cost of production and services. The idea is to give consumers the ability to have a say in a necessity.

**SENATOR MACK COLE** didn't feel the bill would be beneficial to Montana.

**SENATOR ELLIS** asked if anything could be done about the way the federal government sells their power. **Todd Everts** replied that in terms of price, there was nothing he could think of.

**Vote:** Motion **failed 4-7 with Doherty, Halligan, McCarthy, and Ryan voting aye.**

**Motion/Vote:** **SENATOR ELLIS** moved that **SB 475 BE TABLED. Motion carried 7-4 with Doherty, Halligan, McCarthy, and Ryan voting no.**

**Mr. Everts** distributed a draft copy of the committee bill for HB 84, **EXHIBIT**(ens40a07).

**ADJOURNMENT**

Adjournment: 2:35 P.M.

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SEN. MACK COLE, Chairman

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MISTI PILSTER, Secretary

MC/MP

**EXHIBIT (ens40aad)**